Supreme Court, U.S.
FILED
98 1939 FEB 25
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No.

In The

Supreme Court of the United States

October Term, 1998

Melvin Dawson, pro se

Petitioner

v.

Betty Jane Lovell
Dan C. Totten

On Petition For Writ Of Certiorari
To The Eleventh Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

Melvin Dawson
Pro Se
3350 County Line Road
Leighton, Alabama 35646-9802
(256) 446-9276

27pp

Questions Presented

1. Did the Dirstrict Court abuse it's discretion or deny Petitioner the equal protection of the due process of law when it showed favoritism by failing to allow Petitioner who was proceeding as a layman pro se - his right to amend his complaint, when it was obvious by judicial review that the original complaint was detective as filed?

2. Did the District Court commit plain error by considering and ruling on the credibility of the partites involved at the disadvantage of Petitioner, in violation of established procedures and authorities - when such issue of credibility is suppose to be decided or for jury to consider?

3. Did the District Court's findings of facts rest on erroneous or defective applied standards and rationale contrary to established authorities?

4. Did the District Court commit reversible error by failure to consider or address key issue, to wit: prejured attempt by Defendant (Attorney Totten)?

5. Did the District Court commit reversible and/or plain error by not allowing Petitioner, a layman pro se, an extension of time to file his objections to Magistrates R. & R. and then refused to accept out-of-time objections as being timely filed?

6. Did the 11th Circuit Court of Appeals error to reverse when it failed to give Petitioner's pro se "Brief on Appeal" the liberal interpretation mandated by well established authorities, the least of which is Hains-vs-Kerner 404 U.S. 652 (1972)?

7. Did the 11th Circuit Court of Appeals abuse its' discretional authority in siding with a license attorney who was named as a Defendant in this cause - when it's clerk taking sides demonstrated and acted in a malfeasance manner which was detrimental to Petitioner's cause?

8. Was Petitioner, a free citizen proceeding pro se denied adequate access to the District Court and the 11th Circuit Court of Appeals, by erecting an obstacle course which a layman pro se could not overcome?

Subject

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Statements Regarding Questions

Petitioner having a falling out with his common law wife or live-in girlfriend of two years. In a sincere attempt to get back together with his love one, Petitioner wrote letters to this ex-girlfriend (Betty Jane Lovell) professing his love and in rejecting all such pleas. Appellee Lovell hired an attorney (Dan Totten, second Appellee) to put a stop to such unwelcome correspondence. They filed the first stalking charge on or around October 19th, 1995 which was thrown out of court by Judge Young. These two defendants induced a Circuit Court Clerk (Charles Page) to sign two arrest warrants against Petitioner for stalking and harassment. Petitioner was arrested on those defective and illegal arrest warrants issued by the Circuit Court Clerk Page. In the civil complaint, Petitioner filed against those two sub judice. The District Court refused to address or rule on the constitutionality of those defective arrest warrants which Petitioner has constantly claimed were illegal and violated state created statutory laws. It is a matter of record that Plaintiff had to post a $2,500.00 bond to be released from jail pending a trial on the merits - which means Petitioner was harmed financially (among other harms suffered) and such then violated Petitioner's well established rights. See Independentt Party of Arkansas-vs-Priest 907, Supp. 1276 (Ark. 95). A false arrest is made or occurs when it is done without proper legal authority as defined in Guite-vs-Wright 976 F. Supp. 866 (Minn. 97) and even though the false detention of Petitioner in this case lasted for a short time, the authorities cited in the Guite Case is applicable. Because it is in the federal interest to vindicate and enhance the enforcement of procedural rules a state has adopted to ensure fair and efficient administrations of justice, as was so held by this very court in Esslinger-vs-Davis 44 F. 3d 1514 (11 Cir. 95) and because the district court failed to address this known claim and deficiency in Plaintiff's original complaint supra, Petitioner was denied the substantial aspects of the due process of law and adequate access to the courts to redress a constitutional violation imposed upon him by the Appellees' actions. In answering complaint, Defendent Totten attempted deceit and trickery insinuating the stalking charge was reduced to harassment when in reality the grand jury returned a "no bill" on the stalking charge (November 21, 1996) - supporting Petitioner's claim that the stalking

arrest warrants were defective, illegal, and lacked probable cause - the district court showing biasness refused to rule on said issues repeatedly brought to it's attention by Petitioner.

Argument In Support

1. The basic fundamental concept of fair judicial review and access to the court's have been trampled under-foot in this case at bar, to such an extent that a layman can see with clarity the "trampling of rights." As a review of the records in this case will show that the U.S. Magistrate should have seen from the start that the pro se civil complaint was deficient, but dragged out the case in hopes that Petitioner would be snowed under and forget that he had a right to amend his complaint, especially when he had so requested permission early on to amend or to correct any deficiency that may be original complaint. The Magistrate even took the case through the process of pre-trial conference in trying to "snow" Petitioner into believing he will get a trial by jury as requested - then denied Petitioner's late filed objections when Petitioner ask that his objection be timely filed or accepted as being timely failed.

2. The district court erred to reversal by not allowing Petitioner pro se his right to amend his civil complaint [Satchell-vs-Dilworth 745 F. 2d 781 (2 Cir. 84)], especially when Petitioner had so requested in more than one motion. See pages 11 and 14. It is well established that a layman proceding pro se should be afforded every reasonable opportunity to demonstrate that he has a valid claim and freely afforded opportunity to amend his complaint even if he makes the request after the court has entered judgment dismissing the original action. See Satchell-vs-Dilworth 745 F. 2d 781 (2 Cir. 84) and Dominque-vs-Ttelb 831 F. 2d 673 (1 Cir. 87). For the district court to grant defendants Summary Judgment dismissal as it did shocks the conscious of a liberated society. The district court also failed to abide by the dictate of Anderson-vs-Liberty Lobby, Inc. 477 U.S. 242, 255, 1065 S. Ct. 2502, 2513, 91 L Ed. 2d 202 (86) in granting defendants more creditable inference and none to the opposing party - Petitioner in clear violation of the standards set in the Anderson decision supra. That the standards set by this Honorable Court is well established in reviewing a complaint for failure to state a claim courts must determine if the Plaintiff may be entitled to relief under any reasonable reading - assuming the truth of factual allegations in the complaint. See Hishon-vs-King to Spalding 467 U.S. 69,73, 101 S. Ct. 2229, 2232-3333 - 81 L Ed. 2d 59 (1984). The district court committed reversible error when it repeatedly failed to address the

"key" element of this case. The legality of the arrest warrants issued and the Petitioner a free citizen (not a convict as the district court attempted to make you see on 10 page.) has a First Amendment right to have "his day" in court to prove his claims, and this Honorable Court of last resort is asked to correct errors of lower courts and remand this case for a trial accordingly. It seems as if the Magistrate was waiting in the cut to speak for Petitioner to make one mistake - so that the case could be dismissed - and the first mistake that Petitioner made was in the late filing of his objections on the April 13th, 1998 Magistrate's R. & R. Such unethical conduct should not be condoned by this most high Supreme Court especially in this period of time of enlightened citizenry. Petitioner a free citizen - the party hurt and harmed by the defendants (who got one acting under color of state law to act outside of his authority and issue illegal and defective arrest warrant inter alia) should be allowed to have his day in court like any other sincere litigious party - this right is incorportated in the First Amendment which in reality or history shows was the foundation of which this great country was founded.

Then to compound the matter, the 11th Circuit Court of Appeals acted as if it was trying to protect one of it's fraternity brothers (Defendant Dan Totten) in the way it ran Petitioner through a flim-flam gambit in an attempt to frustrate Petitioner's appellate process - which was taken in good faith. The ends of justice can only be reached here and now by a remand of this case, pursuant to the rationale set by this Honorable Court many years ago in Haines-vs-Kerner 404 U.S. 652, 30 L. Ed. 652 (1972).

Sub Conclusion

This case concerns a free citizen's attempt to sue two parties over what he claims was an illegal conspiracy, that resulted in those two named defendants to induce by what ever means - a Circuit Court Clerk to sign - what Petitioner has constantly claimed, was an illegal and defective arrest warrant for the felony charge of stalking (among other charges) and the district court has repeatedly refused to address that specific issue - key issue in case, towit: That a court clerk in Alabama does not have the authority to sign an arrest warrant that has not been approved by a Magistrate Judge: especially a felony arrest warrant to have the party (Petitioner) arrested in another county or any county. Said act was to obtain assistance from one

acting under color of state law - the necessary component for section 1983 action and the district court repeatedly refused to allow the Petitioner his right to amend his complaint to address the under color of state law issue (See pages 11, 14, 15).

Yet the first error so to speak of the Petitioner's proceeding as a layman pro se made - he was late in filing his objections to Magistrate's R. & R., the District Court dismissed the case. An error regarding filing appendix in 11th Circuit Court caused that court to dismiss for failure to prosecute case (See pages 7 and 8). This is Petitioner's last chance to obtain justice - which is all he has ever asked. It is in the federal interest to vindicate and enhance the enforcement of procedural rules a state has adopted to ensure fair and efficient administration of justice (See Esslinger-vs-David 44 F. 3d 1514 (11th Cir. 1995)).

The flim-flam to deny Petitioner adequate access to the courts had its birth in the district court when Petitioner a layman proceeding pro se ask for permission to file out of time objections to the Magistrate's R. & R. on June 8th, 1998. The Magistrate committed prejudicial error when on June 11th, 1998, he entered his order dated June 11th, 1998 in where he denied Petitioner request to have his late objections to Magistrate's R. & R. logged as being timely filed due to the fact that the court lacks jurisdiction to consider further objections due to Petitioner has an appeal on the case therefore that court lacks jurisdiction - see page 22 - when that same Magistrate on May 6th, 1998 had entered his order, directing the Court's Clerk to return Petitioner's $105.00 because his Notice of Appeal was timely filed (See page 24). Such action violated Petitioner's First Amendment's Rights and the spirit of the law as outlined in Nash-vs-Black 781 F. 2d 665 (8 Cir. 86), Kent-vs-Johnson 821 F. 2d 1220 (6th Cir. 87). Therefore, the District Court's dismissal of Petitioner's meritorious cause (see page 8) should not be allowed to stand neither the summary dismissal ot Petitioner's appeal in the 11th Circuit Court (see page 7) for the ends of justice is crying to be heard in this case. The kind of judicial favoritism this case presents -fraternity brother (attorney) over a layman pro se could be expected in a third world country - but has no place or stand in the greatest country on earth. This Honorable Court is asked to correct such an injustice and remand this case back to trial court to allow a jury to decide the credibility of the parties and the merit of this case.

Conclusion

Wherefore, premises considered Petitioner respectfully moves this Most High Supreme Court, after careful review of this cause and appendix, enter an order granting Certiorari Review of the entire records and cause of action and then remand this case back to the District Court for a trial by jury.

It is so prayed May 25 1999.

Respectfully submitted,

Melvin Dawson pro Se

Melvin Dawson, pro se
Petitioner
3350 County Line Road
Leighton, AL 35646-9802
(256) 446-9276

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH COURT

No. 98-06397

Filed December 7, 1998
Thomas K. Kahn, Clerk

MELVIN DAWSON,

Plaintiff-Appellant,

versus

BETTY JANE LOVELL,
DAN C. TOTTEN, Attorney,

Defendants-Appellees.

On Appeal from the United States District Court for the
Northern District of Alabama

BEFORE: CARNES and HULL, Circuit Judges.
BY THE COURT:

Appellant's motion for reconsideration is DENIED.
Appellant's other pending motion are DENIED AS MOOT.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHWESTERN DIVISION
Filed and Entered May 12, 1998

MELVIN DAWSON,
Plaintiff,

v.

BETTY JANE LOVELL, ET AL.,

) CIVIL ACTION
) NO. 96-S-2315-NW

FINAL JUDGMENT

On April 13, 1998 the Magistrate Judge's Report and Recommendation was filed and the parties were allowed therein fifteen (15) days in which to file objections to the recommendations made by the magistrate judge. No objections have been filed by either the plaintiff or the defendants.

After careful consideration of the record in this case and the Magistrate Judge's Report and Recommendation, the court hereby ADOPTS the report of the magistrate judge and it is therefore, ORDERED, ADJUDGED and DECREED that:

(1) plaintiff's motion for summary judgment is DENIED;
(2) summary judgment is GRANTED in favor of defendants; and
(3) this action is hereby DISMISSED.

For information regarding the cost of appeal, see the attached notice.

DONE this the 12th day of May, 1998.

s/ Lynwood Smith, Jr.
C. LYNWOOD SMITH, JR.
UNITED STATES
DISTRICT JUDGE

United States Court of Appeals
Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

Miguel J. Cortez
Clerk

In Replying Give Number
Of Case and Names of Parties

NOTICE TO PRISONERS CONCERNING CIVIL APPEALS

The Prison Litigation Reform Act of 1995 (effective April 26, 1996) now **REQUIRES** that all prisoners pay the Court's $100 docket fee plus $5 filing fee (for a total of $105) when appealing any civil judgment.

If you wish to appeal in a civil case that Act now **requires** that upon filing a notice of appeal you either:

(1) Pay the total $105 fee to the clerk of the district court from which this case arose; **or**

(2) arrange to have a prison official certify to the district court from which the appeal arose the average monthly deposits and balances in your prison account for each of the six months proceeding the filing of a notice of appeal.

If you proceed with option (2) above, the Act requires that the district court order you to pay an *initial partial fee* of at least 20% of the **greater** of either the average monthly deposits or of the average monthly balances shown in your prison account. The reminder of the total $105 fee will therafter be deducted from your prison account each month that your account balance exceeds $10. Each such monthly deduction shall equal 20% of all deposits to your prison account shows that you cannot pay even the required *initial partial fee*, your appeal may nevertheless proceed, **but the total $105 fee will be assessed against and will be deducted from future deposits to your prison account.)**

Fees are not refundable, regardless of outcome, and deductions from your prison account will continue until the total $105 fee is collected, even if an appeal is unsuccessful.

MIGUEL J. CORTEZ
Clerk

PLRA Notice

IN THE UNITED STATES DISTRICT COURT
OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 98-6397

Filed and Entered October 23, 1998

MELVIN DAWSON,

Plaintiff-Appellant,

versus

BETTY JANE LOVELL;
DAN C. TOTTEN, Attorney,

Defendants-Appellees.

On Appeal from the United States District Court for the
Northern District of Alabama

ENTRY OF DISMISSAL

Pursuant to 11th Cir.R. 42-1 (b), this appeal is hereby dismissed for want of prosecution because the appellant has failed to file record excerpts within the time fixed by the rules, effective this 23 day of October, 1998.

THOMAS K. KAHN
Clerk of the United States Court
of Appeals for the Eleventh Circuit
By: s\ Anthony Ricciardi
Deputy Clerk

FOR THE COURT - BY DIRECTION

ORD-40

5/91

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
Filed and Entered October 16, 1996

MELVIN DAWSON,
Plaintiff,)
)
v.) CIVIL ACTION
) NO. CV-96-HM-2315-NW

BETTY JANE LOVELL, ET AL.,)

DAN TOTTEN)

Defendants)

Rebuttal To Motion To Dismiss

Come now Plaintiff Melvin Dawson pro se puisuant to the appropriate rule and authorities herein files and submits his rebuttal and reply to Defendant's Motion To Dismiss subjudice submitted into this court dated September 24th, 1996 and will argue and show the following:

Defendants claim the instant cause of action is due to be dismissed because it does not state a claim against either Defendant upon which relief can be granted. However, Plaintiff rebuts that claim as Plaintiff believes he stated a cause of action - however in the event this court finds any evidence to support the Defendant's claims - then Plaintiff as a pro se herein respectfully moves this honorable court to so notify the Plaintiff of any deficiences in this case at bar and if so then Plaintiff request permission to file an amendment thereto, pursuant to Rule #11 of the Federal Rules of Civil Procedures and Rule #15 (a) which give District Court's jurisdiction and authority to allow Plaintiff's to amend his (or her) complaint.

However, Defendants failed to answer the - particulars of the complaint at bar and only when such answer is filed, then this court would have a better understanding of the issues - then if it finds sufficient evidence lacking- then Plaintiff asks for permission to

amend his complaint [Satchell-vs-Dilworth 745 F. 2d 781 (2 Cir. 84)].

The same argument Plaintiff offices in rebutting Defendants paragraph numbered two (2) there in that if the original complaint at bar lacks the necessary allegations to give this court jurisdiction. Then Plaintiff respectfully moves for permission to file an amendment there to;

Wherefore Plaintiff moves this court for permission to amend, if that is the case, to correct any deficiencies that may be in his original civil action complaint at bar.

It is so prayed.

Respectfully submitted,

s/Melvin Dawson
Melvin Dawson pro se
3350 County Line Road #48
Leighton, AL 35646-9802

Subscribed and sworn to on October 16th, 1996,
s/Martha Cummingham
Notary
My commission expires on 10-02-97.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA

MELVIN DAWSON,
Plaintiff,)
)
v.) CASE
) NO. 96-HM-2315-NW
BETTY JANE LOVELL, ET AL.,)
DAN C. TOTTEN,
)
Defendants)

MOTION TO DISMISS

Come now the Defendants, by and through their attorney, Dan C. Totten, and move this Honorable Court to dismiss the Complaint heretofore filed against the Defendants, and said Defendants allege, separately and severally, as follows, to-wit

1. That the Complaint is due to be dismissed because it does not state a claim against either Defendant upon which relief can be granted.

2. That the Complaint is due to be dismissed because this Court lacks jurisdiction over the subject matter of any claim adequately stated by the Plaintiff in his Complaint.

s/ Dan Totten
DAN C. TOTTEN
Attorney for Defendants
212 South Jefferson Street
P. O. Box 729
Athens, AL 35611
(205) 232-1287

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the above document on the Plaintiff by placing a copy of the same in the U.S. mail, properly addressed.

This the 24 day of September, 1996.

s/ Dan Totten

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
NORTHWESTERN DIVISION
Filed December 29, 1998

MELVIN DAWSON, Pro Se	
Plaintiff	)
	)
vs.	) RE: CIVIL ACTION
	) NO. 96-HM-2315-NW
BETTY JANE LOVELL,	) 11th Cir. No. 99-6397
DAN C. TOTTEN,	
	)
Defendants	)

Rebuttal to Defendants Answer
Dated November 20th, 1997

Comes now Plaintiff Melvin Dawson pro se pursuant to the appropriate rules and authorities herein respectfully submits his rebuttal to the Defendants' November 20th, 1997 Answer in regards to the above referred to cause of action and will argue and show the following:

Plaintiff rebuts Defendants Answer supra in it's entirety as being deficient and or insufficent for consideration for any kind of dismissal for reasons as follows:

1. Defendants first numbered defense paragraph claims - "The complaint is due to be dismissed because it does not state a claim against either Defendant upon which relief can be granted." Plaintiff rebuts that specious claim by pointing out that the complaint at bar is not how defendants would like it to be interpreted - as they attempt to distort to mislead and their attempt must fail, for the very reason, that by the document (pages 18 through 22) submitted by Plaintiff fully supports the complaint and allegations at bar, towit, that defendants conspired to and did cause Plaintiff to be falsely arrested on an illegal and defective arrest warrant - a felony charge of stalking, causing Plaintiff to suffer not only physical harm but mental pain & financial loss. That a review of Plaintiff's exhibits in conjunction with the complaint established beyond a doubt that:

The named defendants attempted to file stalking charges against Plaintiff a year earlier (in 1995) but the honorable Judge

Younger threw out the charge as being unfounded or without probable cause.

2. That a year later defendants conspired with Circuit Court's Clerk Charles Page, Jr. and had said that Clerk issue arrest warrants for Plaintiff on the same charge that Judge Younger dismissed. That exhibits submitted subjudice fully establishes that the Clerk Charles Page had no rightfull authority to issue arrest warrants in the manner he did. That records established that Plaintiff was arrested for stalking and had to post a $2500.00 dollars bond, causing Plaintiff to lose property value costs therewith that he should not have had to, irregardless of the misdemeanor arrest and subsequent conviction - which by the way is on appeal and is not a dead matter or cause.

3. That by defendants original answer by way of Motion to Dismiss - establishes that defendants are decitful and not creditable as they attempted to deceive this court into believing that the stalking charge was reduced to harassing communication by the Limestone County Grand Jury - saying that the Grand Jury returned a lesser charge of harassing communication (See page 18) when in reality the Grand Jury returned a no bill to the stalking charge and complaint (See page 21).

4. In defendants second numbered defense paragraph they argue, that the claim against them is barred by res judicata, but Plaintiff argues in opposition that defendants have failed to offer any supporting evidence or proof what-so-ever that any court ruled on a similar complaint (as this case at bar is) and rended a final judgment on it. Therefore, the defense of res judicatat is not applicable and is not a defense for Defendants action at issue. The misdemeanor charge and conviction (being appealed) is not an issue at bar and can not be used to support defendant res judicata defense.

5. Plaintiff rebuts defendants' third numbered defense paragraph as being no defense because as already offered as evidence, Defendants charged Plaintiff a second time (when the first complaint was dismissed in 1995) with the felony offense of stalking, had Plaintiff arrested without probable cause on that charge, and the Grand Jury failed to indicit Plaintiff on the stalking carge and or returned a no bill to said charge. There is sufficient evidence established by the records to allow this case to move on to a trial as requested.

6. Plaintiff rebuts defendants last - forth defense by refering this Honorable Court to the established facts -as outlined above - the stalking charge at issue was a malicious false charge without probable cause or due process or foundation. It caused Plaintiff to be subject to a false arrest, which itself is actionable - then the harm suffered as a direct result of the alleged conspirarcy which can make a legal act illegal by its very nature. It will be up to a jury to decide if and how much damage Plaintiff will be entitled to and therefore, a review of the record on this case fully outlined the damage suffered.

7. Plaintiff rebuts Defendant Betty Jane Lovell's Affidavit as being self-serving declaration without creditable support. The exhibit attached thereto is irrelevant to this complaint at bar. Said Affidavit attempts to point an accusing finger at Plaintiff Dawson as one filing false or untrue charges, when in reality it was that very person - Defendant Lovell whom acted in a vendictive, spiteful manner (as an exlover - jealous and tried to turn Plaintiff's new girlfriend against him) and conspired with others to file malicious false felony charges against Plaintiff and/or exaggerated claims way out of proportion. It was true Plaintiff was in love with Defendant Lovell and was hurt when she cut off the relationship in the manner she did. Yes, he tried through correspondence to settle their difference but at no time did Plaintiff go out of his way to stalk or harass Defendant Lovell with his presence.

Conclusion

Wherefore Plaintiff respectfully moves this Honorable Court to deny defendants request to have this case dismissed and allow the records to be developed for a trial pursuant to Johnson-vs-Jones 115s. Ct. 215, 2158, 132 L. Ed. 2d 238 (1995) and any other appropriate authorities.

It is so prayed 12-29-97.

Respectfully submitted,

s/ Melvin Dawson
Melvin Dawson, Sr. Pro Se
3350 County Line Road #48
Leighton, AL 35646-9802
205-446-9276

Subscribed and sworn
before me a Notary Public
on December 29, 1997.
s/Martha Cummingham
Notary

My commission expires on 10-2-2001.

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
NORTHWESTERN DIVISION

MELVIN DAWSON,
Plaintiff,)
)
vs.) CIVIL ACTION
) NO. 96-HM-2315-NW
BETTY JANE LOVELL, ET AL.,)
DAN C. TOTTEN,
)
Defendant.)

DEFENDANTS' OBJECTION TO THE REPORT AND RECOMMENDATION OF THE MAGISTRATE

Come now Defendents in the above-styled cause and herewith file their objection to the Report and Recommendation of the Magistrate upon the reference of Senior United States District Judge E. B. Haltom, Jr.

Specifically, on Page 5 of said Report and Recommendation, the Magistrate finds as follows, to-wit:

> "It is not clear from plaintiff's complaint the ultimate disposition of the stalking charges against him, but is assumed for purposes of this motion to dismiss that the charges were dismissed or he was acquitted. Therefore, *Motes* and its predecessors suggest that plaintiff has stated a cause of action under 1983 against Ms. Lovell and Mr. Totten for securing a warrant for Mr. Dawson's arrest on stalking charges. Therefore, the magistrate judge **RECOMMENDS** that the motion to dismiss plaintiffs 1983 claim as to defendants' actions in securing his arrest on stalking charges be **DENIED**."

The Plaintiff's Complaint is void of any allegation that said charges were dismissed or that the Plaintiff was tried on said charges and acquitted. The reason that this does not appear in the Complaint is because said charges have not been dismissed nor has the Plaintiff been acquitted of the same. At the present time, the charges have been presented to the Grand Jury in Limestone County, Alabama, and

an indictment has been returned against the Plaintiff to the lower charge of harassment.

s/ Dan C. Totten
DAN C. TOTTEN
Attorney for Defendants
212 South Jefferson Street
P. O. Box 729
Athens, AL 35611
(205) 232-1287

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the above document on the Plaintiff by placing a copy of the smae in the U. S. Mail, properly addressed, to the Plaintiff.

This the 16th day of December, 1996.

s/ Dan Totten

TOTTEN AND THOMAS, P.C.
Attorneys at Law
212 South Jefferson Street
Post Office Box 729
Athens, Alabama 35612

RETURNED
FOR
POSTAGE
12/23/96

Mr. Melvin Dawson
3350 County Line Road #48
Leighton, AL 35646-9802

IN THE DISTRICT COURT
OF LIMESTONE COUNTY
STATE OF ALABAMA VS
CASE: DC 96 001449.00

DAWSON ROBERT MELVIN
3350 COUNTY LINE RD
LEIGHTON, AL 35646

DOB: 04/07/44 RACE: W SEX M
HT: 5'9" WT: 200 HR: EYE:
SSN: 417586972 ALIAS NAMES:

CHARGE1: STALKING CODE1: STAL LIT: STALKING
TYPE: F
CHARGE2: CODE2: TYPE:
CHARGE3: CODE3: TYPE:
MORE: OFFENSE DATE:
AGENCY/OFFICER: 0440000 BATES
DATE WAR/CAP ISS: DATE ARRESTED: 08/06/96
DATE INDICTED: DATE FILED: 08/16/96
DATE RELEASED: DATE HEARING:
BOND AMOUNT: $2,500.00
SCRETIES: HUDSON
DATE 1: 09/05/96 DESC: ARRG TIME: 0900 A
DATE 2: DESC: TIME: 0000
DEF/ATY: TYPE: TYPE:
PROSECUTOR: JONES, BRIAN C T

GTH CSE: 9600052900 CHK/TICKET NO: L. C. S. D.
GRAND JURY:
COURT REPORTER SID NO: 000000000
DEF STATUS: BOND DEMAND: OPID: MYP

DATE ACTION, JUDGMENTS, CASE NOTES

11-21-96 NO BILLED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHWESTERN DIVISION

Entered June 11, 1998

MELVIN DAWSON,
Plaintiff,)
)
vs.) CIVIL ACTION
) NO. 96-S-2315-NW
BETTY JANE LOVELL, ET AL.,)
Defendants.)

ORDER

On June 8, 1998 plaintiff filed a "Motion for Permission to File Out-of-Time Objections to Magistrate's Recommendation and Have it Logged as Timely filed and/or Request for Permission for Extension of Time in Order to File Objections to Magistrate's R & R." Because plaintiff has an appeal from the dismissal of this action pending in the Eleventh Circuit Court of Appeals, this court lacks jurisdiction to consider further objections in this matter.

In *Griggs v. Provident Consumer Discount Company*, 459 U.S. 56, 58 (1982), the United States Supreme Court held:

> [A] federal district court and a federal court of appeals should not attempt to assert jurisdiction over a case simultaneously. The filing of a notice of appeal is an event of jurisdictional significance--it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.

See also, *Shewchun v. United States*, 797 F.2d 941, 942-*3* (11th Cir. 1986) ("[T]he filing of an appeal of virtually any sort acts to freeze all proceedings in the district court pending resolution of the appeal.... The rule serves two important interests: judicial economy, for it spares the trial court from passing on questions that may well be rendered moot by the decisions of the Court of Appeals; and considerations of fairness to parties who might otherwise be forced,

as a matter of tactics, to fight a 'two front war' for no good reason.")
and *U.S. v. Tovar-Rico*, 61 F. 3d 1529 (11th Cir. 1995).

Plaintiff motion is hereby DENIED.

DONE this the 11th day of June, 1998.

s/ Paul W. Greene

UNITED STATES MAGISTRATE JUDGE
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHWESTERN DIVISION

Entered May 6, 1998

MELVIN DAWSON,
Plaintiff,)
)
vs.) CIVIL ACTION
) NO. 96-S-2315-NW
BETTY JANE LOVELL, ET AL.,)
Defendants.)

ORDER

On April 13, 1998 the undersigned magistrate judge files a report and recommendation recommending that plaintiff's motion for summary judgment be denied, that defendants' motion for summary judgment be granted and that this action be dismissed with prejudice. The undersigned filed a report and recommendation rather than a judgment because the parties in this action have not consented to the jurisdiction of the magistrate judge; therefore, the magistrate judge cannot rule on a dispositive motion. In any event, plaintiff's April 23, 1998 Notice of Appeal is premature as final judgment has not been entered.

The clerk is **DIRECTED** to return the $105.00 filing fee to plaintiff. Assuming the district judge enters a final judgment accepting the report and adopting the magistrate judge's recommendation, plaintiff may then file a notice of appeal and tender the filing fee.

The court notes that plaintiff has not filed objections to the report and recommendation. Plaintiff is advised that the notice of appeal does not satisfy the requirements of objection--i.e., that any objection filed must specifically identify the factual findings objected to.

The clerk is DIRECTED to serve a copy of this order upon plainiff and counsel for defendants.